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ABSTRACT

There has been tremendous growth within the past decade in the number of individuals who have joined "the information highway" and have become empowered to use a computer to gain information about their world. In the United States, there are relatively few governmental restrictions imposed upon citizens who seek to communicate with others over the Internet. However, restrictions are the norm rather than the exception in other parts of the world. This paper examines the general issues of computer-mediated information access and content rights to illustrate the current diversity of opinion about the assembly, ownership and transmission of Internet messages. It illustrates different strategies imposed by national governments to restrict Internet use, and shows how many of the restrictions are in the direct violation of the United Nations and G-7 international agreements. The paper ends with concepts that individual users might wish to adopt to help establish and support their rights in the online world: the fostering of economic progress and technological advancement for all the world's peoples; the acceptance of cultural diversity in all its forms; and the necessity of education to the importance of communication in general and online communication in particular. (Contains 36 references.) (Author/JMK)

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Regulating Internet User Access and Content:

Varying Strategies Imposed by the World's Governments

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Abstract

Within the past decade, there has been tremendous growth in the number of individuals who have joined "the information highway" and have become empowered to use a computer to gain information about their world. In the U.S., there are relatively few governmental restrictions imposed upon citizens who seek to communicate with others over the Internet. However, restrictions are the norm--rather than the exception--in other parts of the world. This paper examines the general issues of computer-mediated information access and content rights, to illustrate the current diversity of opinion about the assembly, ownership and transmission of Internet messages. It proceeds to illustrate different strategies imposed by national governments to restrict Internet use, and shows how many of the restrictions are in direct violation of United Nations and G-7 international agreements. The paper ends with concepts that individual users might wish to adopt, to help establish and support their rights in the online world.

Regulating Internet User Access and Content: Varying Strategies Imposed by the World's Governments

The growth in size and use of the networks which comprise the Internet is so rapid that it is difficult to keep track of just how big the online world is, at any given time. In late 1996, it was reported that 60 million people had access to an online connection, and that the number of connected users was growing by 10% per month (Ellsworth & Ellsworth, 1997). In May, 1996, at least 419,000 sites, active on thousands of networks, were accessible via the 'information highway' known as the Internet (Helmstetter, 1997).

People who have the ability to use computers to communicate on this 'information highway' send and receive person-to-person messages (Kiesler, 1987; Hiltz & Turoff, 1978). The sending and receiving processes operate independently of each other and include "both routine transfer of data and nonroutine interpersonal communication" (Kiesler, Siegel, & McGuire, 1984, p. 1123). Communication of this type helps eliminate the "elaborate, costly, and inefficient formal structure that often stands in the way of getting work done" (Zachmann, 1991, p. 96) because it allows participants to share valuable information and bridge physical, cultural and social barriers.

The online environment created by the development of the Internet has great potential to bring people together, allowing them to share knowledge and create a better world society. But as use of the Internet grows, so do efforts by national governments to restrict Internet access and message content.

Of particular concern are authoritarian regimes which seek to harness the economic benefit of the Internet--while denying their citizens the basic ability to use the network to access information about their world.

Because the Internet is a communications medium which does not recognize national borders, laws which restrict user access and content rights are a hindrance to citizens' free expression. Laws of this type "threaten to chill expression globally" (Sorensen, 1995, not paginated). Such laws also pose a potential hindrance to the development of the Global Information Infrastructure Plan advocated by U.S. President Bill Clinton and other world leaders as a means of bringing about social and economic growth, particularly in underdeveloped nations.

There are other hindrances to online use, of course.

Economic conditions prevent people from having the ability to go online. "Poverty and inequality in the allocation of the world's resources play a major part in blocking the development of the media in many countries,"

Gallimore writes (1995, p. 60). It has, for example, been reported that more than half the people in the world live in nations where there is only one telephone for every 100 people, and two-thirds of the world's population has no access to telephone service (Marks, 1996). Clearly, there's no way that many of the world's people will be able to take part in the 'global information revolution' promised by the Internet and advocated by the GII.

For some, a language barrier is involved, as well. Despite the development of improved translation programs, some languages still do not adapt easily to the computer keyboard. Chinese characters, for example, are so difficult to translate and compose electronically that "[f]or a Chinese office worker, learning the commands needed to type a simple e-mail can mean going to class for a month" (Maney, 1997, p. B1).

For some of the world's peoples, cultural influences may prevent them from going online. Even in the technologically-advanced U.S., there are many isolated populations of people--such as in Amish or Mennonite communities--who choose not to avail themselves of modern technology.

Despite the obvious hindrances of economics, language and culture, there remains a significant barrier to Internet use--a barrier set up by governments of the world seeking to control what their people do online. An incalculably large portion of the world's population--people who are economically and socially ready to reap the benefits of online use--are denied access, and the advantages that go with it, purely because of government policy decisions. These policy decisions can typically be traced to domestic protectionism, nationalism, mercantilism, sovereignty, and/or cultural imperialism (de Sola Pool, 1990).

While it would be easy to make value judgements about the propriety of such government concerns, each case clearly needs to be considered on its own merits. Each society is different, with unique values, orientations, beliefs and attitudes, structure, culture, and relationships. People's use of the media--'new' media, especially--hinges upon perceived values and ways people can best be served by what's offered (See Campbell, 1998; Klopf, 1987). This author has no desire to find fault with individual governments for their policy choices.

However, many of the policy decisions now being made--policy decisions which will be outlined in the following pages--are in direct opposition to existing international agreements. Online users and potential users, regardless of where they live, are often unaware that the world is not a free and open place for Internet communication--and that government actions to control access and content to the 'information highway' often run contrary to international

law. Armed with this knowledge, users can structure their beliefs, actions, and online experiences accordingly, and bring appropriate pressure for change.

Access Issues

A dictionary definition of access includes the terms "the act of approaching; the right to enter or make use of" and "a state or quality of being easy to approach" (American Heritage Dictionary, 1969, p. 9). So, citizens who have access to online communication via the Internet would be people who are not discriminated against by their government on the basis of age, race, sex, color, cultural heritage, political viewpoint, birth status, or other social, economic or cultural variable. In other words, any citizen who has the ability to go online would not be prevented from doing so.

Citizens who have access would, by definition, have the right to freely engage in searches for any type of information they wish--regardless of its content or nature. Citizens who have access would have the potential to be exposed to a variety of viewpoints during their use of online resources, and would be free to engage in two-way communication with others.

An element of technological diversity would also be included in any definition of access. That is, technical standards would be in place, allowing information from online sources to "be applied easily in a variety of systems" (Sorensen, 1995, not paginated).

Access is a physical thing, primarily. People who have Internet access have the freedom to go online, when they want, in ways they want. They have the right to use online resources as they see fit, and the right to overcome technical barriers to online use.

On an increasingly frequent basis, national governments are acting to block the transfer of information to their citizens, and acting to prevent citizens from accessing information which typically is labeled inappropriate, obscene, or a threat to social or national security.

In China, for example, a new national law which went into effect in February, 1996, extends the government's control of the Internet into all territories--including Hong Kong. Internet providers must meet licensing criteria. All Internet links are to be run through government computers, and all news content must be directly approved by the government's Xinhua news agency before distribution to online users (Williams, 1996, February 6).

In addition, all Chinese citizens must register with government security forces within 30 days of obtaining an online account. Failure to do so would constitute a violation of state security laws (Williams, 1996, February 15).

A similar situation exists in India. Although the government recently changed policy to allow private Internet service providers into the country, all providers are required by law to route their communications through a government intermediary agency (Mahabharat, 1996).

In Pakistan, Internet service providers are pressured by the government and allowed to intervene and stop "undesirable" discussion groups and electronic messages (Ajoy, 1995).

In South Korea, Internet providers are given a government-published list of banned sites and required by law to prevent access by users to those sites. The South Korean Data and Communications Ministry seeks to prevent citizens from accessing computer software, interactive games, sexually-explicit sites, and sites with information about bomb- and drug-making (South Korea to Censor. . ., 1995).

In Saudi Arabia, only a "single, government-controlled gateway for Internet service" was available in 1995 (Sorensen, 1995). Dr. Ali Al-Johani, Minister of Posts, Telephones, and Telegraphs, reported that, beginning in 1996, the Internet would be accessed in his country "only for constructive objectives" (Ambah, 1995, p.1). Even business access to the Internet was to be controlled by the government.

In Singapore, perhaps the irony of ironies is occurring. The progressive, affluent Asian nation plans to become the most 'wired' nation in the world--it promises a fiber optics cable link to every household by the year 2000 (Williams, 1996, March 6). Yet, as the same time, the national government requires Internet service providers to register before they begin operations, and to block online access to all material deemed improper by the government. Providers are required to "filter out material that undermines public morals, political stability, and religious harmony" (Armstrong, 1996, March 12).

Singapore provider employees who fail to perform their censorship role could receive 20 years in jail--even for an offense as seemingly small as offering personal financial advice which could be interpreted by the government as an effort to undermine national economic security (Armstrong, 1996, March 12).

Additionally, Singapore businesses which allow customers to access the Internet--such as libraries and cafes--must monitor what users access online. While it's unclear exactly how this monitoring must be carried out, the government has stated its position that "an uncensored media lays the foundation for an increase in crime" and has promised swift punishment against those who fail to obey (Williams, 1996, March 6).

The bottom line is that a nation's economic and social conditions, though they may in themselves pose a hindrance to online development, are not the only barriers. Government restriction of access--through user registration requirements, service provider licensing, service provider screening, site blocking or complete prohibition on certain services--is an equal or greater hindrance. And there seems to be no consistent relationship between the two. Singapore, one of the most economically developed nations of the world, with a small, affluent, and well-educated populace, has among the most stringent access restrictions. Malaysia, which is in many ways much poorer, with a larger rural land area and much larger population, has no restrictions and seeks none (Jurilla, 1996, March 28).

Content Issues

An examination of a dictionary definition of the term content finds such descriptors as: "that which is contained in a receptacle; subject matter, as in a speech or document, the meaning or significance of a literary or artistic work, as distinguished from its form" and "area or extent; size" (American Heritage Dictionary, 1969, p. 287).

Content, then, is an all-encompassing concept which includes not only the editorial and graphic "subject matter" of online communications, but also the "meaning or significance" of communications and the "area" occupied by transmissions through a modem port, on a VDT screen, or in a computer's hard drive.

A number of efforts are being undertaken in various nations to regulate content. It is important to remember, though, that editorial censorship--perhaps the most noticeable aspect of content control--is just one way to control what users access, and how they access it.

In the United Kingdom, for example, a primary focus on content has to do with defamation laws. Efforts are being undertaken to bring British defamation laws up to date, by including in them provisions for addressing online communication.

A bill introduced in the House of Lords in 1996 had provisions which essentially would invalidate an online providers' defenses against defamation claims in cases in which "the service provider has the ability to act on a warning, or has the knowledge that the [offensive] message exists, and still does nothing" (Dennis, February 15, 1996, not paginated).

At the time of the bill's introduction, CompuServe, Europe Online, and Microsoft Network were arguing to the government that providers could not monitor or control the content of all messages sent over their networks.

Similar efforts to establish provider responsibilities were taking place in Germany, where the main content concerns seems to involve pornography and neo-Nazi commentary.

German online providers would not be held liable for the initial postings of illegal or offensive materials, provided "the service provider of company did not know about the material" (Dennis, April 2, 1996, not paginated). Companies which had knowledge of offensive content and took no censorship action "would almost certainly be responsible for the material in question."

The arrest of a 28-year old Japanese man in early 1996 highlighted concerns among online providers about their content-regulatory role in Japan.

Hiroshi Kamekura was arrested on suspicion of distribution of pornography through his World Wide Web site. It was believed that Bekkoame Internet, one of Japan's largest online providers, was the host system on which the pornography was posted. While little was said publicly by the police after Kamekura's arrest, it was reported that Japanese police consider it to be provider service companies' responsibility to "stay aware of the content" of users' home pages and to warn customers if content violates national law. Provider companies "can be forced to turn over private customer information such as customer names, phone numbers, and addresses" (Williams, February 5, 1996, not paginated).

In the United States, the most recent government-sanctioned effort to censor online communication content came through the Communications Decency Act. The CDA would have made it a crime to transmit "indecent" material over computer networks which could be accessed by children. The CDA also borrowed heavily from the 123-year old Comstock Act to make the dissemination of information about abortion equally criminal (Pember, 1998).

The CDA was adopted in the U.S. Senate without hearings, attached to the Telecommunications Act of 1996, and signed into law by President Clinton. Still, there were substantial doubts about CDA's constitutionality. U.S. Attorney General Janet Reno, the nation's highest-ranking law enforcement official, announced that the Justice Department would not enforce much of what CDA called for.

In June, 1996, a panel of federal judges found that, while attempts to regulate protected speech in the online world are not improper per se, the CDA as a law was "too intrusive." The law was overturned (Hernandez, 1996, p. 50).

Other U.S. government action to restrict content of Internet transmissions has been going on for years, under the guise of the federal Racketeer Influenced and Corrupt Organizations (RICO) Act (Hentoff, 1990, p. 12). "RICO makes it a crime for anyone to commit a "pattern" of two or more "racketeering" acts in conducting the affairs of an "enterprise," [and] just about any kind of crime can be prosecuted as a RICO violation" Hentoff writes (1990, p. 12).

RICO laws can--and have been--used against protest organizations "engaged in any sort of confrontational tactic as a form of protest" (p. 13). The statutes, Hentoff contends, allow prosecutors to seek and gain not only property seizure but triple the damage award initially sought against a defendant if the crime is judged to be a RICO crime.

Although Hentoff says that RICO does not really apply to these cases and that attorneys and prosecutors must surely "recognize that RICO and free speech are profoundly incompatible" (1990, p. 13), "to others the temptations of so powerful a weapon--as well as the prospect of punishing a wicked defendant by inflicting triple damages--is overwhelming."

While there have, of course, been instances in which specific criminal acts were carried out with the assistance of a computer, these instances of criminal activity would appear to be the exception and not the rule (Rifkin, 1991; Kramer, 1990). What's troubling to many experts, though, is the growing concern that U.S. law enforcement authorities cannot be kept from going too far with their extensive warrants, searches, surprise raids and seizures of equipment (Rifkin, 1991; Elmer-Dewitt, 1991; Kramer, 1990) and that corporations which feel they've been victimized by computer hackers are allowed to have representatives accompany law officers and assist in RICO raids (Brennan, 1991).

The potential for government raiding of computer host sites also exists in Singapore, where online regulations stiffened in 1996. New measures enacted by the government require online providers to filter out material which undermines "public morals, political stability, and religious harmony" (Armstrong, 1996, March 10). World Wide Web

page content providers must register with the government; their editors must be "persons of standing" in the community. Although the government itself admits there will be problems with policing online content, violators could legally serve as much as 20 years jail time for infractions as vague as that of "undermining the economic stability" of the nation (Armstrong, 1996, March 10).

The government arm responsible for Internet content supervision in Thailand is known as the National Electronics and Computer Technology Center, or Nectec. Nectec requires that online provider companies and their subscribers agree that "they will not show anything considered indecent" (Armstrong, 1996, February 26). Though Nectec was meeting with the government's judicial authorities, in late 1996, violators had not been threatened with any criminal prosecution.

Other examples of content restriction can be seen in Australia, where several states have passed or are planning to introduce "online censorship legislation" (Sorensen, 1995), and in New Zealand, where national law classifies computer discs as publications. New Zealand authorities have "seized and restricted" computer files from individual users (Sorensen, 1995).

In Malaysia, on the other hand, as of early 1996, the government was "quite fixed on the idea that there should be no censorship" (Jurilla, 1996, March 28, not paginated). Government officials in Malaysia participated in a conference in Singapore, reiterating their beliefs that the Internet is "an instrument for democraticizing societies" and a key stimulus for economic activity throughout Asia.

Although there are exceptions--most notably, Malaysia--in most parts of the world, government entities are moving quickly to impose online content restrictions. Along with the increasing restrictions come increased efforts to police the actions of users, and wide-ranging punishments to be levied against those who break the rules.

Existing International Law

Though many new ways are being found to prevent online communication access and use by citizens, there are in fact several international laws and treaties which condemn this practice, either implicitly or explicitly.

The Universal Declaration of Human Rights, approved by the United Nations General Assembly in 1948, declares in Article 19 that all people have the right to freedom of opinion and expression, and that "this right includes

freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (Universal Declaration of Human Rights, 1948, p. 4).

The International Covenant on Civil and Political Rights, approved by the General Assembly in 1966, also guarantees this right. The ICCPR states that governments can restrict citizens' rights, provided such restrictions are legal and necessary to protect other individuals' rights or reputations. It specifically gives citizens the right to "pursue their economic, cultural, and social development" (Article 1, p. 1); be free from "arbitrary or unlawful interference with his privacy, family, home, or correspondence" (Article 17, p. 6); "have the right to hold opinions without interference" (Article 19, p. 7); have the right to freely associate with others (Article 22, p. 7); and "to take part in the conduct of public affairs" (Article 25, p. 8)(International Covenant on Civil and Political Rights, 1966).

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information also argue that restrictions on Internet access are acceptable "when the government can demonstrate that the restriction is a prescribed by law and is necessary in a democratic society to protect a legitimate national security interest." Governments must demonstrate that any restriction imposed "is the least restrictive means possible" (As cited in Sorensen, 1995).

And finally, the conclusions report published as a result of the meeting of G-7 nations leaders in Naples in July, 1994, condemns any effort to discourage communication interaction among the world's citizens. "The G-7 partners," the report states, "are determined to ensure that the information society addresses the needs of citizens. . . by establishing universal service frameworks that are adaptable, they will ensure that all citizens have access to new information services" (G-7 Chair Conclusions Report, 1995, pp. 2-3). The document specifically commits the participating nations to "protect creativity and content" so that all online users "enjoy the technical and legal means to control the use of their property" (p. 6).

Admittedly, existing international treaties, laws and agreements have little affect over the nationalistic interests of governments. International law and custom "reflects the ways that nations relate to each other" and not to their people (de Sola Pool, 1990, p. 106). What's more, there is, realistically, precious little incentive for the United Nations or any other international group to force nations to comply with agreements on citizen information access when there are much

more pressing militaristic and human rights concerns in a dozen different locations--e.g., Bosnia, Iraq, Somalia, Zaire. Internet access seems an insignificant issue when compared to cultural annihilation and genocide.

Toward a world where individual online rights are supported

The world of online communication is a more restricted place than it should be, and a more threatening place than many users realize. How nice it would be if a simple solution could be proposed to make users aware of cyberspace's dangers. Or, better still, a solution which would result in the dropping of unreasonable access and content restrictions by governments.

But, alas, the world is a complicated place. The products of evolving media are "in inevitable disharmony with the concept of a national culture and its slow rate of change" (de Sola Pool, 1990, p. 122). The social, political, economic, and cultural differences which have brought about governmental restrictions on Internet use aren't going to go away soon. In fact, many people suggest the problems will get worse before they get better (Frederick, 1993).

A step in the right direction will be economic progress and technological advancement for all the world's people and nations. There are more telephones in Manhattan than in all of Africa (Marks, 1996). Disparities such as this must be overcome. People must have the means at their disposal to communicate and learn from- and with others.

Another step in the right direction will be increasing acceptance of cultural diversity in all its forms--without limits. Too many people, Molina suggests, have the philosophy of "Long live diversity,. . . as long as it conforms to my standards, to my mind set, to my view of life, to my sense of order" (Molina, 1990, p. 118). An online, 'connected' world's people cannot exist together under this mindset. There must be change.

Another step in the right direction will be education--to the importance of communication in general, and online communication in specific. Citizens must learn the value of free association and utilization of online resources, and must be able to "access a wide range of information" on the Internet, and "become active producers of information rather than passive consumers" (Sorensen, 1995, not paginated).

Finally, in order for all the world's people to one day have relatively unrestricted access to- and content control over- the Internet, we must put aside nationalistic differences and fears.

The world must become what Langer (1992) calls "the ideal multicultural neighborhood"--a place in which all peoples, backgrounds, ideas and philosophies are allowed a fair hearing. Human differences are celebrated. Goals are contemplative and realistic. People are safe. Process comes before outcome. People come together naturally and disagree gracefully. Leaders and followers set goals together--and strive to reach them. In all, there is a spirit of togetherness working for the good of people (Langer, 1992). We can only hope that the speedy development of the online world will hasten the coming of this day.

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